

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

In re: BAIR HUGGER FORCED AIR
WARMING DEVICES PRODUCTS
LIABILITY LITIGATION

MDL No. 15-2666 (JNE/DTS)

This Document Relates To:

GWENDOLYN FOLMER,

Civil Action No.: 17-cv-03259

Plaintiff,

**PLAINTIFF'S FIRST AMENDED
MOTION FOR SUBSTITUION OF PARTY**

NOW COMES Plaintiff Gwendolyn Folmer, by and through undersigned counsel, and submits this, her First Amended Motion for Substitution of Party naming Tiffany Hudnall, in her capacity as Administratrix of the Estate of Gwendolyn Folmer as appointed pursuant to Letters of Authority issued by the Probate Court of Athens County, Ohio, as the new party and would respectively show the Court the following.

INTRODUCTION

Plaintiff Gwendolyn Folmer passed away on July 28, 2017. A timely Suggestion of Death was filed on April 6, 2018 pursuant to Pretrial Order No. 23. A Motion to Substitute Party was timely filed on July 5, 2018 seeking to substitute Faith Keaton as the party, based on representations to counsel that she would be seeking appointment as representative of the estate. However, counsel later learned that Tiffany Hudnall, Ms. Folmer's eldest daughter, had already been appointed as the personal representative of the estate by the

Probate Court of Athens County, Ohio, on January 10, 2018. A copy of the Letters of Authority appointing Tiffany Hudnall is attached hereto as Exhibit A. Therefore, Tiffany Hudnall, in her capacity as Administratrix of the Estate of Gwendolyn Folmer is the proper substituted party pursuant to both Ohio Rule of Civil Procedure 25(A)(1) and Federal Rule of Civil Procedure 25(c).

ARGUMENT

The Ohio Code prioritizes children—after the spouse—to handle the affairs of a decedent. OHIO REV. CODE ANN § 2105.06. As the daughter of Ms. Folmer, Ms. Hudnall was properly appointed as the personal representative of Gwendolyn Folmer’s Estate. *See* OHIO REV. CODE ANN § 2305.21. Based on the appointment as Administratrix of the Estate, Ms. Hudnall is the “proper party” to the lawsuit in her capacity as personal representative of the estate and may rightfully be substituted pursuant to Ohio Rule of Civil Procedure 25(A)(1).

Likewise, Ms. Hudnall is the proper party under Rule 25(a) of the Federal Rules of Civil Procedure as her status as personal representative has been conclusively established. A motion for substitution of parties under Rule 25(c) falls within the discretion of the District Court. *ELCA Enterprises, Inc. v. Sisco Equipt. Rental & Sales, Inc.*, 53 F.3d 186, 190 (8th Cir. 1995). The purpose of Rule 25(c) is to allow litigation to continue unabated when an interest in a lawsuit changes hands. *Id.* A “proper party” for substitution under Rule 25(c) when the original Plaintiff is deceased is the decedent’s legal representative. *In re Baycol Products Litig.*, 616 F.3d 778, 783 (8th Cir. 2010). As Ms. Hudnall was appointed as the Administratrix of the Estate of Gwendolyn Folmer by Letter of Authority

issued by the Probate Court of Athens County, Ohio, she is the duly appointed legal representative of the estate and the proper party under Rule 25(c) to continue this litigation.

CONCLUSION

As stated above, Plaintiff requests that this Court grant Plaintiff's First Amended Motion to Substitute Party and name Tiffany Hudnall, in her capacity as Administratrix of the Estate of Gwendolyn Folmer, as the proper party.

Dated: December 13, 2018

KENNEDY HODGES, LLP

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